



MAGISTERIAL SERVICES

# Visiting Magistrate's Protocol

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for Juvenile Visiting Justice Inspections

2009

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## Introduction

The Juvenile Visiting Justice (VJ) scheme is designed to ensure that the rights of detained juveniles are respected throughout their period of detention. It is well recognised, both in this country and internationally, that juveniles who are detained without any independent oversight are at greater risk of a number of rights violations including:

**Right to protection:** Juveniles must never be subjected to physical or sexual abuse, bullying or harassment and must never be discriminated against on the basis of their age, gender, sexual orientation, race or any other individual characteristic.

**Right to health:** Juveniles must always have access to the same standard of medical care that non-detained children are entitled to when they are injured or sick.

**Right to education:** Juveniles must always have the opportunity to continue their education whilst they are detained. This education should ensure that, once released, they have not fallen behind their non-detained peers.

**Right to due legal process:** Juveniles must be given their legal rights. They must have their cases reviewed within the limits of the legislation. They must have access to their family and their Juvenile Court Officer and/ or a lawyer and they must only be detained with a valid court order.

All Magistrates have been appointed as Visiting Magistrates by the Judicial and Legal Services Commission, for the purposes of the Correctional Services Act (1995).

The Chief Magistrate has directed all Juvenile Court Magistrates to commence monthly inspections of juvenile detention facilities in their province from 2006. At a minimum, each visit should include every provincial CJS or juvenile detention facility; and at least one police cell or

Visits serve primarily to "establish the facts": to understand how the place of incarceration and the system work, to detect problems in the daily lives of detainees, and to document any abusive practices or violations of the rights of detainees defined by laws and international standards. It is on this basis that the authorities are approached and any other measures can be taken.

The preliminary visits conducted across the country in 2007-08 found that a number of children had their rights respected whilst in detention. The reports also found that a number of children experienced violations of their rights to protection, health and education. The table below outlines a summary of the kinds of problems that were identified through observations and interviews.

Abuse by police/ warders	Delays bringing juveniles to court
Abuse by other detainees	Lack of trained PJOs
Lack of bedding and mosquito nets	Lack of VJCOs
Not enough food to eat	Compulsory reviews not being done
No clean water to drink	Invalid warrants

Overcrowded cells	Juveniles going to adult court
Sick/injured juveniles not being treated	Excessive periods of remand
Unhygienic facilities	Lack of legal representation
Lack of education and vocational activities	Poor record keeping

The juvenile VJ Scheme has a number of functions:

- Oversee the treatment of children
- Identify good practice and share this with other detention facilities
- Identify and address rights violations
- Assist Government to develop and implement appropriate programs and interventions and influence the development of relevant policy.

The following Protocol identifies the responsibilities of each stakeholder and outlines the process that should be followed by the VJ Party when preparing for and conducting a visit. It has been endorsed by the Law and Justice Sector Working Group.

**The VJ report recommendations (and implementation progress) discussed as a standing agenda item at each provincial Juvenile Justice Working Group meeting.**

## **Legal requirements**

The *Correctional Services Act* gives Magistrates authority to conduct the inspections. The Judicial and Legal Services Commission has appointed every Magistrate as a Visiting Magistrate for the purposes of this Act. There are also Regulations that accompany the Act.

### **Correctional Services Act 1995**

#### **Section 144. Visiting Magistrates.**

(1) The Judicial and Legal Services Commission shall, in respect of each correctional institution and lock-up, appoint a magistrate to be a Visiting Magistrate.

(2) The Visiting Magistrate shall visit the correctional institution or lock-up in respect of which he is appointed—

- (a) at least once in every month; and
- (b) on such other occasions as the Commissioner requests.

#### **Section 145. Duties of Visiting Magistrate.**

(1) The Visiting Magistrate shall, in respect of the correctional institution for which he was appointed—

- (a) inquire into the treatment and conduct of the detainees; and
- (b) inspect and observe the correctional facilities and programmes; and
- (c) hear any complaints made to him by members; and
- (d) review the document of commitment of every detainee received into the correctional institution since the last visit of a Visiting Magistrate for apparent error or excess and to assist a detainee in the initiation of a review if appropriate; and
- (e) hear and determine appeals under Section 161 from hearings by the Commanding Officer of offences; and
- (f) inquire into such matters as he thinks fit or the Commissioner directs; and
- (g) perform such other duties as are prescribed.

(2) The Visiting Magistrate shall, within seven days, or such further time as the Commissioner allows, after making his visit, forward to the Commissioner a report concerning any of the matters referred to in Subsection (1).

### **Correctional Services Regulation 1995**

#### **Section 123. Visits by Visiting Magistrates.**

(1) Where a Commanding Officer is notified by a Visiting Magistrate of the intention to visit the correctional institution at least 24 hours before the visit, the Commanding Officer shall post a notice in the correctional institution in a place that is visible to members and detainees setting out the time and date of the visit.

(2) The Commanding Officer shall—

*(a) bring to the attention of the Visiting Magistrate the names of members and detainees who have requested to see the Visiting Magistrate; and*

*(b) make the necessary arrangements for the Visiting Magistrate to interview those members and detainees.*

**(3) The Visiting Magistrate may—**

*(a) interview a member or detainee in private; and*

*(b) subject to a direction of the Commanding Officer made in the interest of correctional institution security, interview the detainee out of hearing but in the sight, of a correctional officer.*

**(4) The Commanding Officer shall ensure that during an official visit, the Visiting Magistrate is given access to every part of the correctional institution that is necessary in order for the Visiting Magistrate to perform the duties of the Visiting Magistrate.**

**Section 124. Moneys and effects of detainees.**

*(1) A Visiting Magistrate may direct, in writing, a Commanding Officer to forward to a person nominated by the detainee any article surrendered by, taken from or sent to or for a detainee.*

*(2) A Commanding Officer shall immediately comply with a direction received by him under Subsection (1).*

**Section 125. Interpreters.**

*A Visiting Magistrate shall, whenever necessary, be accompanied during his visits to an institution by an interpreter and shall not employ a correctional officer, member or detainee as an interpreter.*

**Section 126. Visiting Magistrate's register.**

*A Visiting Magistrate shall record in a book in bound form to be kept for the purpose at each institution and to be known as the Visiting Magistrate's Register—*

*(a) the date and duration of his visits; and*

*(b) any complaint made to him by a detainee or member in the institution, and the action taken by him on the complaint; and*

*(c) any remarks and suggestions that he thinks necessary.*

**Section 127. Assistance to Visiting Magistrates.**

*A Commanding Officer of a correctional institution shall—*

*(a) facilitate inspections and interviews by Visiting Magistrates; and*

*(b) ensure that no member is present during an inspection or interview of a detainee by a Visiting Magistrate; and*

*(c) remain within easy call, should his presence be required by a Visiting Magistrate; and*

*(d) afford any information required by a Visiting Magistrate in the performance of his duties.*

## **Procedure for conducting visits**

There are 8 main steps to follow for a Visiting Magistrate's inspection:

1. plan the visit
2. inspect the documents
3. inspect the physical environment
4. interview staff
5. interview juveniles
6. take necessary immediate action
7. write the report
8. distribute the report
9. follow up on problems

### **1. PLANNING THE VISIT**

Visits must be conducted to each correctional institution, juvenile institution, juvenile remand centre at least once a month. The cells in at least one police station or lock up must also be conducted monthly.

**TIP:** If you have sent a letter to tell the Commanding Officer you are coming, take a copy of the letter when conducting the visit. This can be shown to officers at the gate who may be unfamiliar with the VJ process.

Visits can be announced or unannounced. There are a number of things that the VJ should consider when deciding whether to announce a visit. The decision should be made in consultation with the provincial juvenile justice working group.

Some of the things to consider are:

- Announced visits may help to maintain positive relationships with the staff, and allow the VJ party time to prepare for the visit.
- Unannounced visits often allow the VJ party to make a more accurate assessment of the situation of children. In some cases, children may be coerced or pressured to present a more positive account of their experiences, the facility can be cleaned and problems can be rectified or hidden before you arrive.
- If it is decided that announced visits will be conducted, it should be the long-term goal of the VJ Party to conduct unannounced visits and the decision to conduct announced or unannounced visits should be reviewed by the provincial Juvenile Justice Working Group every three months.

**TIP:** If you arrive and are advised that there are no juveniles in the facility – you must still complete the VJ. In particular, it is important to complete the checklist to assess the facilities, services and conditions in which juveniles may be detained.

You should also interview any adult prisoners because:

- some prisoners may tell you that they are under 18 years of age and have been incorrectly imprisoned as an adult
- adult prisoners may advise that juveniles are present, but have not been recorded as juveniles.

### ***Duties of the Juvenile Court Clerk***

Magistrates are often very busy and need help to carry out their VJ duties. The Juvenile Court Clerk (or the Clerk of Court, if no Juvenile Court Clerk has formally been appointed) should help with administrative and logistical parts of the VJ visit.

At the beginning of each year the Juvenile Court Clerk should, in consultation with the Juvenile Magistrate (or SPM if no Juvenile Magistrate has formally been appointed), make a schedule of monthly inspection dates.

The week before each visit, the Juvenile Court Clerk should:

- ✓ Check with the Juvenile Court Magistrate whether he/she is available for the VJ. If not then you must reschedule for the next available date.
- ✓ In consultation with the Juvenile Court Magistrate and the Provincial Juvenile Justice Working Group, develop an invitation list and notify each party (see section 0 for further information on this)
- ✓ Advise the SPM and Clerk of Court that the District Court vehicle will be required. If this is not possible then arrange an alternative vehicle.
- ✓ If the visit will be an announced VJ, contact the Commanding Officer of the facility to notify them politely of your visit.
- ✓ Print off a copy of the Juvenile VJ inspection report checklist for the Juvenile Court Magistrate and yourself.
- ✓ Ensure that all members of the VJ party are provided with an exercise book or writing pad for taking notes.

### ***Who should go on the visit?***

The VJ group must include a Magistrate. The Juvenile Court Clerk should accompany them to assist the Magistrate to record information and familiarise themselves with the cases that are likely to be re-listed with the Juvenile Court. In other countries, it has been found to be beneficial to include others in the VJ Group. Many stakeholders are well placed to support the Visiting Magistrate to identify and follow up rights violations. Below is a list of the various stakeholders that you should think about inviting.



<b>Member of VJ Group</b>	<b>Examples of how they can assist</b>
Juvenile Court Officer or Volunteer Juvenile Court Officer	<p>These officers know the laws and policies that relate to juvenile justice and can assist to identify juveniles who are detained in violation of the existing laws and policies.</p> <p>These officers are able to assist juveniles to have their matter re-listed with the Juvenile Court for review, if necessary.</p>
Welfare or Community Development Officer	<p>These officers are trained to talk to juveniles in a child-friendly manner.</p> <p>They are also able to assist juveniles to make contact with their family and to make referrals to specialised services when required (e.g. counselling).</p>
Non-government representative or community leader	<p>Inviting community leaders demonstrates the Sector's commitment to transparency and accountability. These leaders are able to advocate for rights violations to be addressed quickly, and to hold law and justice sector officers accountable for following up concerns or problems.</p> <p>Some juveniles also find it easier to talk about any concerns with an person that is independent of the justice system.</p>
Politician (LLG councillor or Governor)	<p>Often these leaders are unaware of the situation faced by detained juveniles and may be in a position to offer political support or funding assistance to rectify problems.</p>
Ombudsman Commission Officer	<p>These officers can assist juveniles to make formal complaints or referrals to the Ombudsman Commission when they believe that their rights have been violated by a Government official.</p>
Provincial Guidance Officer from the Education Department	<p>If there are any juveniles being deprived of their right to education, these officers may be able to arrange schooling, either at a local school or through the FODE (distance education) program.</p>
Lawyer from Public Solicitor (or a private lawyer willing to do pro bono work)	<p>Lawyers can make applications for review or appeal of decisions, and they can make bail applications.</p> <p>They can also provide legal advice about what rights the</p>

	juveniles have, and advise juveniles about the civil action that is possible, if their rights have been violated.
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***Who should not go on the visit?***

- Anyone that who may scare the juveniles or make them uncomfortable
- Anyone who may breach the privacy of the juveniles
- Anyone prohibited by law



## 2. INSPECTING DOCUMENTS

### ***(a) For visits to CS facilities, remand centres and juvenile institutions***

Before interviewing the juveniles, you must review their files.

**TIP:** Make sure the number of files matches the number of detainees – you should do a head count to ensure that there is a file for every juvenile.

The following information should be recorded about each juvenile:

Name:	Age:
Case No:	Offence:
Custody since:	Court:
Last Court date:	Next Court date:
Other relevant information:	

These details must be kept confidential; they are not attached to the VJ report. This information is to assist the Magistrate with writing the report, following up particular cases, and to make the next visit easier. The VJ Report contains a summary of the juvenile detainee data. When completing this section of the report you must NOT include the names of any juveniles. This is to prevent their privacy being breached when the report is circulated to other stakeholders.

The following questions from the report can be answered by inspecting the files:

- What is the total number of residents? (question 1)
- All residents are over 7 years of age (question 2)
- All juvenile residents are under 18 years of age? (question 3)
- All residents in a Correctional Institution are over 14 years, or otherwise authorised by the Director, Juvenile Courts? (question 4)
- All residents have a current remand warrant or committal order attached to their file? (question 5)
- All remandees have had their remand reviewed by a Court in the last 2 weeks? (question 6)
- Where relevant, all residents have had their committal reviewed by a Court in the last 6 months? (question 7)
- All children have undergone a medical examination upon entry, which is available on their file? (question 23)
- Disciplinary measures, including any physical restraint or isolation been recorded in the residents' file? (question 32)
- All residents have been admitted with a valid remand warrant or committal order? (question 33)

- An individual file has been created for all residents? (question 36)

***(b) For police cells visits: Inspecting the Occurrence Book***

Before interviewing the juveniles, you must review the occurrence book. All police stations are required to maintain a separate occurrence book for juveniles. If there is no separate juveniles occurrence book then look through the main occurrence book for entries regarding juveniles. Make sure the police records of the number of people in the cells matches the number of detainees – you should do a head count to ensure that there is an entry for every juvenile. If the headcount does not match the official entries – this must be addressed immediately.

### **3. INSPECTING THE PHYSICAL ENVIRONMENT**

The VJ party should inspect all parts of the juvenile's environment including sleeping area, bathrooms, cooking facilities, recreational areas, etc. Answer questions 9-12 of the report. If you have access to a digital camera, you can take photos of the facilities to put in the report.

**TIP:** It is often easier to determine whether the environment is suitable by asking the group the following questions:

- Would this be acceptable to you, if your child was kept here?
- Would this be acceptable to you if it were a home in the community?

## **4. INTERVIEWING STAFF**

### ***(a) For visits to CS facilities, remand centres and juvenile institutions***

#### **Interviewing the warder / OIC juveniles**

The VJ party should discuss the purpose of the visit with the warder and give them an opportunity to raise any concerns or positive developments. The party should seek an update on the progress of recommendations made in the previous VJ report.

### ***(b) For visits to police cells***

#### **Interviewing police**

The VJ party should discuss the purpose of the visit with the Police Station Commander / Shift OIC and give them an opportunity to raise any concerns or positive developments. The party should seek an update on the progress of recommendations made in the previous VJ report.

**TIP:** Most officers will provide accurate information about the standards of the facility and treatment of juveniles. Whilst it is important to record their assessments, the VJ party must also conduct their own physical observations of the facility and interview juveniles separately to confirm the information.

For example, in a VJ visit conducted in 2008, the officer told the Magistrate that juveniles were being fed three times a day. When the Magistrate spoke to the juveniles, all of the juveniles reported that they were only fed once per day. If the magistrate did not speak with the juveniles directly, this issue would not have been identified.

## 5. INTERVIEWING THE JUVENILES

It is essential that the VJ Party offers each juvenile detainee the opportunity to speak with them. Juveniles may decline an interview with the VJ Party, however it is the responsibility of the Visiting Magistrate to directly ask each juvenile whether they would like to meet with members of the VJ Party. These interviews should be conducted in a manner that encourages the juvenile to speak openly about their situation.

- ✓ In line with the Correctional Service Regulations (1995), the party should interview each juvenile detainee alone
- ✓ The interview should take part out of hearing of the officers or warders
- ✓ The children should be reassured that they are not allowed to be punished for anything that they tell you. You should also assist them to identify who they could talk to if there are punished or mistreated as a result of talking to you.

Introduce yourself and the other party members to each juvenile. Explain why you are there and let them know that anything that they tell the party may be used to formulate recommendations to improve their standard of care. You should reassure them that you will not use their name when sharing the written VJ Report with outside parties.

Keep your initial questions general. You can ask them to tell you about the facility and their experience in detention. Once they have had an opportunity to tell you about their situation in their own words, you can also ask them directly if they are having any problems.

**TIP:** A member of the VJ party should record notes of interviews with juveniles. This will assist the Magistrate to write the report, identify issues and recommendations and follow up any relevant individual cases.

If you see a child with an injury, ask how it happened and whether they have received any medical care. Remember that if they are being mistreated or abused, they may be shy or nervous about telling you. It is important to reassure the juvenile that they are not allowed to be punished for anything they tell you.

**TIP:** If you identify that a child is being abused, or denied medical care and they report that they are concerned about negative consequences from the officers or other detainees if you act on this information, you must determine how best to ensure the juvenile's safety before you leave the facility.

You may wish meet with the juvenile and the officer together. At this time, you should explicitly remind both the juvenile and the officer that there is to be no repercussions for the juvenile's disclosure and that you will monitor their treatment. A member of the VJ Party should follow up with the juvenile in the next few days to ensure that no punishment was received.

## 6. IMMEDIATE ACTION

The Visiting Magistrate is responsible for determining what actions must be taken immediately and what recommendations will be saved for the written report. However, at a minimum, the rights violations outlined in the box below **must** be dealt with before the VJ party leave the detention facility. To determine the course of action, consider:

- ✓ What must be done to prevent this from re-occurring?
- ✓ Who has a responsibility to prevent this from re-occurring?
- ✓ Is the juvenile satisfied with this course of action?

Whilst immediate action must be taken, the Visiting Magistrate should also consider including recommendations for systemic improvements or changes to prevent the recurrence of the rights violations.

### ***(a) For visits to CS facilities, remand centres and juvenile institutions***

<b>Rights violation</b>	<b>Required outcome and suggested actions</b>
the juvenile is injured or sick and requests or requires medical attention	<p><b>The child must receive medical attention.</b></p> <ul style="list-style-type: none"><li>• The Commanding Officer or OIC should be notified that action is required</li><li>• If there is a medical facility at the institution, the child should be transferred, or the medical staff should come and attend to the child before you leave</li><li>• If the nearest medical facility is outside the institution, the St Johns Ambulance or other medical service provider should be contacted. An agreed time should be made for them to attend to the juvenile</li><li>• A member of the VJ party should follow up to ensure that the medical attention was provided, at the time agreed with the medical provider.</li></ul>

juvenile reports being abused by a warder or officer	<p><b>The juvenile must be protected from further abuse.</b></p> <ul style="list-style-type: none"> <li>• The Commanding Officer or OIC should be notified of the allegation</li> <li>• In consultation with the Commanding Officer and the other members of the VJ party, the Visiting Magistrate must determine whether the juvenile or other juveniles remain at risk</li> <li>• An action plan must be developed by the VJ party and Commanding Officer that eliminates the risk</li> <li>• A member of the VJ party should follow up to ensure that action plan was implemented.</li> </ul>
the juvenile reports being abused by another resident	<p><b>The juvenile must be protected from further abuse.</b></p> <ul style="list-style-type: none"> <li>• The Commanding Officer or OIC should be notified of the allegation</li> <li>• In consultation with the Commanding Officer and the other members of the VJ party, the Visiting Magistrate must determine whether the juvenile or other juveniles remain at risk</li> <li>• An action plan must be developed by the VJ party and Commanding Officer that eliminates the risk</li> <li>• A member of the VJ party should follow up to ensure that action plan was implemented.</li> </ul>
the juvenile is being detained with adults	<p><b>The juvenile must be separated from adult detainees.</b></p> <ul style="list-style-type: none"> <li>• The Commanding Officer or OIC should be notified that action is required</li> <li>• The juveniles must be detained in a space that meets the minimum standards</li> <li>• The Commanding Officer, in consultation with the Visiting Magistrate, should determine whether the juvenile or adult detainees will be moved, and effect the move before the VJ party departs.</li> </ul>
the juvenile is being detained without a valid court order	TO BE DETERMINED IN CONSULTATION WITH MS

***(b) For visits to police cells***

<b>Rights violation</b>	<b>Required outcome and suggested actions</b>
the juvenile has been remanded	<b>The child must be detained in line with the Police Juvenile Policy.</b>



in violation of the Police Juvenile Policy and Protocols	<ul style="list-style-type: none"> <li>• The Police Station Commander should be immediately notified.</li> <li>• The Magistrate should discuss with the PSC what action will be taken. This may involve releasing the juvenile.</li> <li>• The PSC should investigate the behaviour of the arresting officer and discipline or educate him/her as necessary.</li> </ul>
the juvenile is injured or sick and requests or requires medical attention	<p><b>The child must receive medical attention.</b></p> <ul style="list-style-type: none"> <li>• The Commanding Officer or OIC should be notified that action is required</li> <li>• St Johns Ambulance or other medical service provider should be contacted. An agreed time should be made for them to attend to the juvenile</li> <li>• A member of the VJ party should follow up to ensure that the medical attention was provided, at the time agreed with the medical provider.</li> </ul>
juvenile reports being abused by a police officer	<p><b>The juvenile must be protected from further abuse.</b></p> <ul style="list-style-type: none"> <li>• The PSC should be notified of the allegation</li> <li>• In consultation with the PSC and the other members of the VJ party, the Visiting Magistrate must determine whether the juvenile or other juveniles remain at risk</li> <li>• An action plan must be developed by the VJ party and PSC that eliminates the risk</li> <li>• A member of the VJ party should follow up to ensure that action plan was implemented.</li> </ul>
the juvenile reports being abused by another resident	<p><b>The juvenile must be protected from further abuse.</b></p> <ul style="list-style-type: none"> <li>• The PSC should be notified of the allegation</li> <li>• In consultation with the PSC and the other members of the VJ party, the Visiting Magistrate must determine whether the juvenile or other juveniles remain at risk</li> <li>• Visiting Magistrate may exercise discretion to release the juvenile under their Court appearance</li> </ul>
the juvenile is being detained with adults	<p><b>The juvenile must be separated from adult detainees.</b></p> <ul style="list-style-type: none"> <li>• The PSC should be notified that action is required</li> <li>• The juveniles must be detained in a space that meets the minimum standards</li> <li>• The PSC, in consultation with the Visiting Magistrate, should determine whether the juvenile or adult detainees will be moved, and effect the move before the VJ party departs.</li> </ul>
the juvenile is	Before you leave, you should ensure that the juvenile is either:

being detained without charge or arrest	<ul style="list-style-type: none"> <li>• Charged and given access to a juvenile court officer, or</li> <li>• Released into the care of an appropriate adult</li> </ul> <p>The decision should also be recorded in the Juvenile Occurrence Book.</p>
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## 7. WRITING THE INSPECTION REPORT

The Visiting Justice template must be completed for each visit. The checklist should be completed during the visit. Notes of interviews and the list of recommendations should be completed within two days of the visit. Any member of the party can be requested to keep notes, however, the Visiting Magistrate is responsible for ensuring that the final report is completed accurately.

Tip: When completing in the inspection report, be sure to base your answers not only on what the officers told you, but also on what the juveniles have said.

**Every concern and problem identified during the visit must have a recommendation in the report.** The recommendations should be developed by the Visiting Magistrate, in consultation with the VJ party. They should include:

- Action to be taken
- Who is responsible for taking the action
- Timeframe

Some recommendations may take some time to implement (such as renovations). It is important to include additional recommendations that ensure that the rights of juveniles are not violated in the interim.

Tip: The Juvenile Courts Act (1991) requires that the best interests of the child remain the paramount consideration. As such, recommendations should be child-focused. This means that the recommendation, when implemented, must ensure that the juvenile's rights are restored or protected.

**Example from a previous report:**

**Problem: Abuse or violence by warders**

Several juveniles reported being beaten by warders. Two had black eyes, one had a cut lip, and others had various cuts and bruises that they said were inflicted by warders. They did not know the names of the warders. This is an extremely serious matter. No action has been previously taken by CS.

**Action already taken:**

- The medical officer came and treated the boys while the VJ party was there.
- The Visiting Magistrate informed the Commanding Officer about the matter and received an assurance that no further abuse would occur.

**Suggested follow up recommendations:**

- Visiting Magistrate should write a letter to the Commanding Officer to request that the matter be investigated and ask for a meeting to discuss the outcome of the investigation. A copy of the letter will be sent to the CS Commissioner.

- Visiting Magistrates should remind the Commanding Officer that the CS Act provides for penalties for warders, which should be utilised to discipline warders in cases like this.
- If action is not taken to investigate the abuse and punish those responsible, the matter should be discussed by the provincial Juvenile Justice Working Group meeting to identify a new strategy.
- Visiting Magistrate should notify Child Welfare.

## **8. DISTRIBUTING THE REPORT**

The final report should be copied and sent (via post, fax or email) to the following people within one week of the visit.

### ***(a) For reports on CS facilities, remand centres and juvenile institutions***

Send to these people in your province:

- Chair of the Juvenile Justice Working Group
- Senior Provincial Magistrate
- Juvenile Court Officer (CBC)
- Law & Justice Sector Advisor (if there is one)
- Commanding Officer of institution
- Officer in Charge of Juveniles at the institution.

Send to these people in NCD:

- Judicial and Legal Services Commission
- Chair of the National Juvenile Justice Working Committee
- Chief Magistrate
- Commissioner of CS
- Chief Justice of the National Court
- DJAG Secretary
- Director of Community Based Corrections

### ***(b) For reports on police cells***

Send to these people in your province:

- Juvenile Court Officer (CBC)
- Law & Justice Sector Adviser (if there is one)
- Chair of the Juvenile Justice Working Group
- Senior Provincial Magistrate
- Police Station Commander
- Police Juvenile Officer

Send to these people in NCD:

- Judicial and Legal Services Commission
- Chair of the National Juvenile Justice Working Committee
- Chief Magistrate
- Police Commissioner
- Chief Justice of the National Court

- f) DJAG Secretary
- g) Director of National Community Based Corrections

*"All prisons are places where men and women are detained against their will. The potential for abuse is always present. Therefore they must be institutions which are managed in a way which is fair and just. All institutions which are managed by or on behalf of the state should be subject to public scrutiny. This is especially important in the case of prisons because of their coercive nature."*

- Andrew Coyle, A human rights approach to prison management, International Centre for Prison Studies, 2002.

## **9. FOLLOWING UP ON ISSUES**

The visit itself probably won't change much unless you follow up on the problems you have found. So how can you make sure that all issues are addressed? Here are some ideas:

### **Informally**

Often the best way to solve a problem is to talk informally to the officers on the ground and try to work out a solution.

### **Juvenile Justice Working Groups**

The previous month's VJ reports should be discussed at each provincial JJWG meeting. It is a good opportunity for inter-agency cooperation to solve any problems that have been found.

If there are problems that cannot be solved at the provincial level, you should raise the matter with the Chair of the National Juvenile Justice Working Group.

### **Provincial administration**

If the problem is something that the provincial administration could help with, then find a contact person and request a meeting. Bring them a copy of the VJ report and explain what assistance you are seeking.

### **Chief Magistrate**

Magistrates can ask the Chief Magistrate to consider raising issues with NCM (National Coordinating Mechanism), Law and Justice Sector Working Group or departmental counterparts directly.

### **Ombudsman Commission**

The VJ party can help detainees make complaints to the Ombudsman Commission (OC). Once a complaint is received, the OC will determine whether it falls within their mandate. Violence against children by CIS or Police Officers are relevant issues. The OC can then conduct an investigation and make recommendations. The complaints can also be used to generate data on trends, which in turn, can be used to initiate its own investigation into Government practice. With the MOA in place with police, OC can assist Police Internal Affairs with investigations, and can also contact IA to suggest that they assist if they become aware of a relevant case.

## **Public Solicitor**

All juveniles have the right to legal representation. The Public Solicitor's Office is in the process of expanding its reach to several juvenile courts. These officers can arrange for matters to be re-listed quickly if the juvenile has been detained by a non-Juvenile Court, if they have been remanded for extended periods of time or if their case is due for review. They can also facilitate appeals where non-custodial alternatives could be considered. Even where no Public Solicitor is assigned to deal with juveniles, making referrals will assist the Public Solicitor's Office to collect data on the numbers of juveniles in need of legal assistance, and assist them with their future planning.

## **Community Based Corrections / Juvenile Courts Service**

The Community Based Corrections or Juvenile Courts Service Officer can also assist juveniles to have their matter re-listed with the appropriate court. They can facilitate pre-sentence reports and reviews of custodial orders and can also assist the juvenile to contact their parents or extended family where necessary. They should also assist the juvenile to identify an appropriate place to stay whilst they await trial, to ensure that they are not remanded unnecessarily.

Below are some examples of follow up actions that could be taken to address commonly identified problems:

### **Example from a previous report:**

#### **Problem: Juveniles detained without a valid warrant**

There are a number of parties responsible for ensuring a valid warrant is on file:

- The Court *must* issue a warrant before the child leaves the premises.
- The Commander at the Institution *must* inspect the warrant prior to accepting a child.

#### **Suggested recommendations:**

1. Visiting Magistrate should discuss the problem with Judge's associate and National Court criminal clerks.
2. The Chair of the National JJWC should write to the National Court Registrar and the Chief Justice, advising them of the current practice and the Working Group's concern that such illegal detention is taking place.
3. The Commander of the Institution should develop a protocol for CS Officers, on how to respond when children return to the Institution without a warrant

### **Example from a previous report:**

#### **Problem: Long term remand**

Many National Court remandees were found to be detained for extended periods of time, without review. The lack of oversight and review leaves children vulnerable to abuse, may deny them access to family and education and deprives them of their liberty for a crime for which they may not be convicted.

#### **Suggested recommendations:**

1. Chair of the National Juvenile Justice Working Committee should write to the Chief Justice to express concern at the length of these periods of remand and the failure to undertake regular reviews

2. Chief Magistrate should raise this concern with the National Law and Justice Sector Working Group.
3. CBC should follow up directly with the Associate to Justice Allen David regarding delayed decision.
4. Visiting Magistrate should write to Public Solicitor to raise concerns about inadequate legal representation.

**Example from a previous report:**

**Problem: Lack of access to education (Items 16 and 44b)**

Several juveniles wanted to continue schooling at Bomana, but there are no school classes available.

**Action already taken:**

1. Enquiries have been made, and it will cost K150 per subject through the FODE program. Salvation Army can organise this education, but funding needs to be found.
2. The issue was discussed at the provincial Juvenile Justice Working Group but no solution was found.

**Suggested recommendations:**

1. Commanding Officer should investigate possibility of getting funding for FODE program for juveniles.

**Example from a previous report:**

**Problem: No reviews being done**

Under the *Juvenile Courts Act*, juvenile remandees and convicts should have their files reviewed at specific intervals. The Director of CBC should be ensuring that these reviews take place.

Section 34(3) of the Act says that where a juvenile is sentenced to an order of custody or imprisonment, the Director must apply for review of the order every six months from the date of the original order. According to section 36, the JCO should prepare a review report on the juvenile, containing the views and comments of all persons who have been concerned with the custody and welfare of the juvenile since the imposition of sentence on him; and the recommendations of the Juvenile Court Officer. Currently there are no reviews or variations being applied for, and there is no system in place within CBC for these reviews to happen.

**Suggested recommendations:**

- The JCO should be invited on the next VJ inspection, and while we are conducting the inspections, he can interview the juveniles whose case needs reviewing.
- At the national level, the Visiting Magistrate should ask Chief Magistrate to raise this issue with the Director of CBC. Alternatively, Visiting Magistrate will write to the Chair of the National Juvenile Justice Working Group to put this problem on the agenda for their next meeting.

**Example from a previous report:**

**Problem: Police violence**

The VJ party interviewed a 15yr old boy who had been beaten by police with a fan belt. He showed us his bruises and said he was hit by police before they put him in the cell.

**Action already taken:**

- The Visiting Magistrate discussed the matter with the PSC, who said he would investigate the matter.
- The juvenile was released into his parents' custody.

**Suggested recommendations:**

- Police representative on the provincial Juvenile Justice Working Group should follow up the investigation with the PSC and report to the next JJWG meeting.
- Visiting Magistrate should send a copy of this report and a letter requesting a meeting to discuss the issue with the PPC. A copy of the letter will be sent to the Police Commissioner.

**Example from a previous report:**

**Problem: Police detention of juveniles**

If juveniles are arrested and locked up in a police cell, they must be brought to the Juvenile Court without delay. Keeping them locked up for days or weeks without attending court is against the *Juvenile Courts Act*, the *Police Juvenile Policy and Protocol* and the *National Juvenile Justice Policy*.

**Recommended actions:**

1. PSC should issue direction to police that if a juvenile is locked up, they MUST attend court on the next sitting day, or else be released.
2. Police Juvenile Officer should inform Juvenile Magistrates if there is a juvenile in the cell that isn't brought to Court.
3. Juvenile Court Clerk should be completing the Magistrate's Checklist for every juvenile that appears before the Court.